

1 Shana E. Scarlett (217895)
2 HAGENS BERMAN SOBOL SHAPIRO LLP
3 715 Hearst Avenue, Suite 202
4 Berkeley, CA 94710
5 Telephone: (510) 725-3000
6 Facsimile: (510) 725-3001
7 shanas@hbsslaw.com

8 Steve W. Berman
9 HAGENS BERMAN SOBOL SHAPIRO LLP
10 1301 Fifth Avenue, Suite 2900
11 Seattle, WA 98101
12 Telephone: (206) 623-7292
13 Facsimile: (206) 623-0594
14 steve@hbsslaw.com

15 Elizabeth A. Fegan
16 HAGENS BERMAN SOBOL SHAPIRO LLP
17 820 North Boulevard, Suite B
18 Oak Park, IL 60301
19 Telephone: (708) 776-5600
20 Facsimile: (708) 776-5601
21 beth@hbsslaw.com

22 Attorneys for Plaintiff

23 UNITED STATES DISTRICT COURT
24 NORTHERN DISTRICT OF CALIFORNIA

25 SHAWN RILEY, individually and on behalf of)
26 all others similarly situated,)

27 Plaintiff,)

28 v.)

SAFEWAY, INC.,)

Defendant.)

No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

E-filing
ORIGINAL
FILED
DEC - 5 2007
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV 07 6174

JCS

1 Plaintiff Shawn Riley, by counsel, individually and on behalf of all others similarly situated
2 ("Plaintiff") tenders the following Class Action Complaint and Demand for Jury Trial:

3 **I. OVERVIEW**

4 1. This class action and representative action seeks relief on behalf of Plaintiff and the
5 members of the Class for injuries sustained by them as a result of Safeway's deceptive marketing
6 of milk as organic when the milk is not, in fact, organic and Safeway's increase in gross sales and
7 sales price.

8 2. During the Class Period, Defendant, which is one of the largest food and drug
9 retailers in North America, violated its duty to inform customers that the "O"-label organic milk is
10 not organic. Defendant's nondisclosure of this material fact constitutes misrepresentation, unfair,
11 unlawful, fraudulent, and/or deceptive business practices in violation of California's consumer
12 protection laws. The materiality of this information is proven directly by federal and state
13 regulations which, at all relevant times, required Defendant to inform consumers that milk that
14 were purchasing was not organic. Defendant flagrantly violated and, in some cases, continue to
15 violate these regulations.

16 3. As a result of Defendant's misbranding, concealment and nondisclosure, customers
17 are misled to purchase the organic milk and/or to pay a greater price than they would otherwise
18 pay. Defendant has been unjustly enriched at the expense of these consumers.

19 4. This is a class action and a representative action brought by Plaintiff, who purchased
20 organic milk from, produced or distributed by Defendant in the State of California during the Class
21 Period.

22 **II. JURISDICTION AND VENUE**

23 5. The United States District Court for the Northern District of California has diversity
24 jurisdiction over this Class Action lawsuit pursuant to 28 U.S.C. § 1332 as amended by the Class
25 Action Fairness Act of 2005, because, upon information and belief, the amount in controversy
26 exceeds \$5,000,000, exclusive of interest and costs, and this lawsuit is a Class Action in which
27 some members of the Plaintiff Class are citizens of states different than Defendant. *See* 28 U.S.C.
28 § 1332(d)(2)(A).

1 complies with the Organic Foods Production Act of 1990 (7 U.S.C. § 6501, *et seq.*) and its
2 implementing regulations (7 C.F.R. Part 205). Plaintiff and the Class Members they represent pay
3 premium prices for Safeway's "organic" milk.

4 IV. FACTUAL ALLEGATIONS

5 A. Market for Organic Milk

6 12. Safeway is and has been selling milk or milk products that it represents to be
7 "organic," when, in fact, the milk is not organic throughout the time period of December 5, 2003
8 through October 15, 2007 ("class period" or "relevant time period"). Safeway sells this milk to
9 consumers directly using its own brand name "O."

10 13. The market for organic milk has boomed in recent years. According to the United
11 States Department of Agriculture ("USDA"), total milk or milk products production in the United
12 States in 2004 was 170 billion pounds. Fluid milk or milk products sales since 1975 have been
13 steady at approximately \$11 billion per year. Currently, organic fluid milk or milk products sales
14 represent about 18% of overall sales. In 2005, total organic dairy sales were approximately
15 \$2 billion. The organic dairy sector is annually growing at an approximate rate of 16%.

16 14. Consumers rely on manufacturers and sellers of milk or milk products to determine
17 what milk is in fact organic. As Aurora Dairy, from which Safeway obtained the milk labeled
18 under its "O" brand, expressly recognizes, "Organic certification is the public's assurance that
19 products have been grown and handled according to strict procedures without persistent toxic
20 chemical inputs." <http://www.auroraorganic.com/aodweb/site/itemcontent.aspx?icategoryid=6>.

21 B. Organic Milk Standards

22 15. The USDA has set forth four requirements that must be satisfied for milk to be
23 labeled as "USDA Organic": (a) the milk must not come from cows that have been treated with
24 Bovine Growth Hormone; (b) the milk must not come from cows that have been treated with
25 antibiotics; (c) the milk producing cows must only eat feed that has been grown without pesticides;
26 and (d) the milk must come from cows that have some "access to pasture."

27 16. In order to sell or label an agricultural product as organically produced, the product
28 must be produced and handled in compliance with the Organic Foods Production Act of 1990

1 (“OFPA”), *see* 7 U.S.C. 6505(a)(1)(A), and the USDA adopted regulations, *see* 7 C.F.R. Part 205,
2 *et seq.*

3 **C. Safeway’s Representations Concerning Its Organic Milk**

4 17. By marketing, selling, or otherwise representing that its milk was “organic,”
5 Safeway represented that the milk abides by these laws and regulations and that the milk is
6 “organic.”

7 18. Specifically, Safeway included labels on its “O” brand milk that stated, in whole or
8 in part, as follows:

9 **Description :**

Organic Fat Free Milk

10 **Ingredients :**

Organic Grade A Fat Free Milk, Vitamin A Palmitate, Vitamin D3.

11 **Product Attributes :**

Organic

12 Kosher

13 FatFree

14 **Product Details :**

15 Ultra-Pasteurized Vitamins A & D added. USDA Organic. Grade A;
16 Ultra-Pasteurized; Homogenized. Organic from the Source. There's a
17 lot that goes into a good glass of milk. It starts with the land. Our
18 daily pastures are environmentally friendly, maintained with the use
19 of recognized organic horticultural practices. The dairy cows that
20 produce O Organics Milk enjoy a healthy mix of fresh air, plenty of
21 exercise, clean drinking water and a wholesome, 100% certified
22 organic diet - and they are not given growth hormones or treated
23 with antibiotics. All of these practices support sustainable farming,
24 which is good for the environment, good for the cows and good for
25 the milk. That's why our O Organics Milk tastes like milk should,
26 fresh and pure. To be certified organic, dairy cows must be managed
27 under organic livestock practices at least one year before milking.
28 Their feed must be grown on land that has been under organic
cultivation practices for a minimum of three years. Certified Organic

19. On the carton of Safeway’s O Organics Milk is the following statement:

ORGANICS

Organic from the Source

There’s a lot that goes into a good glass of milk. It starts with the
land. Our dairy pastures are environmentally friendly, maintained
with the use of recognized organic horticultural practices. The dairy
cows that produce O Organics Milk enjoy a healthy mix of fresh air,
plenty of exercise, clean drinking water and a wholesome, 100%
certified organic diet – and they are not given growth hormones or
treated with antibiotics.

All of these practices support sustainable farming, which is good for the environment, good for the cows and good for the milk. That's why our *O* Organics Milk tastes like milk should – fresh and pure.

The carton also states:

ORGANICS

organic

Fat Free Milk

Vitamins A & D Added

Grade A • Pasteurized • Homogenized

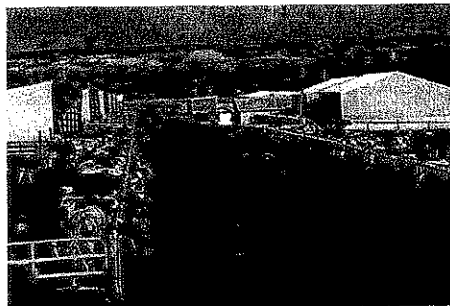
"To be certified organic, dairy cows, must be managed under organic livestock practices at least on year before milking. Their feed must be grown on land that has been under organic cultivation practices for a minimum of three years."

20. However, Safeway's milk was not organic according to Federal law. In fact, Safeway's "organic" milk was produced in large scale factory farms and otherwise failed to comport with Federal law and thus should not have been certified organic.

D. The USDA's Investigation of Safeway's Supplier

21. By marketing, selling, or otherwise representing that its milk was "organic," Costco represented that the milk abides by the laws and regulations requiring certain conditions be met before the milk is labeled "organic."

22. Aurora was formed by the former owners of Horizon, who sold Horizon to Dean Foods. The sale left Aurora with thousands of milk cows. Aurora then started its Colorado operation which produces 10 million gallons of milk a year. It is in essence a factory-farm model, there is no opportunity for cows to graze, as depicted below:



1
2 23. Aurora's primary business is selling milk for use in the private-label milk market for
3 Safeway, Costco, Wild Oats and others.

4 24. However, Aurora's milk was not organic according to Federal law. In fact,
5 Aurora's "organic" milk was produced in large scale factory farms and otherwise failed to comport
6 with Federal law.

7 25. On March 7, 2007, the USDA identified the following "violations by Aurora
8 Organic Dairy," from which Safeway obtained the milk Safeway sold under its own labels, of
9 federal law:

10 a. From 2003 through 2006, for dairy animals at its Platteville, Colorado
11 facility, Aurora failed to provide a total feed ration that included pasture, failed to establish and
12 maintain pasture conditions appropriate for minimizing the occurrence and spread of diseases and
13 parasites, and failed to establish and maintain access to pasture, in willful violation of 7 C.F.R.
14 §§ 205.237(a), 205.238(a)(3), and 205.239(a)(2);

15
16 b. During the spring and early summer of 2006, Aurora entered conventional
17 dairy animals into organic milk or milk products production at its Dublin, Texas facility before
18 those animals completed the required one-year period of continuous organic management, in
19 willful violation of 7 C.F.R. § 205.236(a)(2);

20 c. From 2003 through 2006, Aurora purchased for its Platteville facility, from
21 Promiseland Livestock in Falcon, Missouri, dairy animals that had been converted from
22 conventional to organic milk or milk products production, and thus had not been under continuous
23 organic management from at least the last third of gestation, in willful violation of 7 C.F.R.
24 § 205.236(a)(2)(iii);

25
26 d. From on or about July 10, 2004 through on or about September 28, 2005,
27 Aurora moved organic dairy animals from its certified Platteville facility to Wells Ranch in Gill,
28

1 Colorado, a non-organic (non-certified) livestock operation for management, and thereafter
2 returned them to the Platteville facility for organic dairy production, in willful violation of 7 C.F.R.
3 § 205.236(b)(1);

4 e. From February 2005 through March 2006, Aurora moved organic calves
5 from its certified Platteville facility to non-organic (non-certified) livestock operations for
6 management, and eventually returned them to the Platteville facility for organic dairy production,
7 in willful violation of 7 C.F.R. §§ 205.236(a)(2)(iii) and 205.236(b)(1);

8 f. From 2003 through 2006, Aurora used non-organic agricultural products,
9 such as wheat straw and corn stalks, as bedding for organic dairy animals at its Platteville facility,
10 in willful violation of 7 C.F.R. § 205.239(a)(3);

11 g. From on or about July 27, 2004 through on or about September 30, 2005,
12 Aurora routinely caused organic dairy animals from Promiseland Livestock, a certified organic
13 dairy, to be delivered to Wells Ranch, a non-organic livestock operation, for livestock
14 management, before having them delivered to Aurora's Platteville facility for organic dairy
15 production, in willful violation of 7 C.F.R. § 205.236(b)(1);

16 h. From December 5, 2003 through at least September 7, 2007, Aurora sold,
17 labeled and represented its milk or milk products as being organically produced when such milk or
18 milk products were not produced and handled in accordance with the National Organic Program
19 regulations, in willful violation of 7 C.F.R. §§ 205.102, 205.200 and 205.400(a);

20 i. From on or about October 29, 2003 through on or about March 9, 2006,
21 Aurora failed to notify its certifying agent immediately concerning changes to the operation of its
22 Platteville facility regarding the termination an utilization of off-site facilities, such as Wells
23 Ranch, contracted by Aurora to provide pasture and/or livestock management services, in willful
24 violation of 7 C.F.R. § 205.400(f)(2);

1 j. Aurora failed to include a summary statement, supported by documentation,
2 in the December 29, 2004 and December 28, 2005 Organic System Plans for its Platteville facility
3 that detailed changes to the previous year's Organic System Plan regarding the termination and
4 utilization of off-site facilities, such as Wells Ranch, contracted by Aurora to provide pasture
5 and/or livestock management services, in willful violation of 7 C.F.R. § 205.406(a)(1)(i);

6 k. From 2004 through 2006, Aurora failed to maintain adequate records that
7 disclosed all activities and transaction in sufficient detail as to be readily understood and audited to
8 demonstrate compliance with the OFPA and the National Organic Program regulations concerning
9 pasture arrangements with operations identified by Aurora in its annual Organic System Plan for its
10 Platteville facility, in willful violation of 7 C.F.R. § 205.103(b);

11 l. In the October 29, 2003 and December 29, 2004 Organic System Plans for
12 its Platteville facility, Aurora failed to include a full description of the practices and procedures to
13 be performed by Wells Ranch, in willful violation of 7 C.F.R. § 205.201(a)(1);

14 m. In the December 28, 2005 Organic System Plan for its Platteville facility,
15 Aurora failed to include a full description of the practices and procedures to be performed by
16 Matsude Farms, Salazar, Cockroft Dairy Farm, and Ray-Glo Dairy, as at its Woodward facility, in
17 willful violation of 7 C.F.R. § 205.201(a)(1); and

18 n. In the October 29, 2003, December 29, 2004, and December 28, 2005
19 Organic System Plans for its Platteville facility, Aurora failed to include a full description of the
20 monitoring practices and procedures to be performed and maintained to verify that its Organic
21 System Plans were effectively implemented with respect to off-site operations contracted by
22 Aurora to provide pasture and/or livestock management services, in willful violation of 7 C.F.R.
23 § 205.201(a)(3).

1 26. On August 23, 2007, Aurora entered into a Consent Agreement with the USDA.
2 This Consent Agreement contained a stipulation for probation. The USDA found that Aurora had
3 not been in compliance with the federal organic food regulations, and placed it on a one year
4 probationary period. The Consent Agreement provided that Aurora was required to remove
5 organic dairy animals "currently present at Platteville that transitioned under the '80/20' rule" from
6 the plant, and instructed that such animals could only be utilized as conventional animals, not
7 certified organic animals. Finally, the Consent Agreement also requires Aurora to address all
8 issues that were raised in the Notice of Proposed Revocation in order for its organic certification
9 not to be revoked.

10 **E. Defendant's Illegal Conduct**

11 27. Safeway violated, and continues to violate federal and state law (including the
12 applicable regulations by selling its milk as "organic." By mislabeling the milk, Safeway has
13 misled, and continues to mislead Plaintiff and the Class Members into paying a higher price for
14 milk that cannot be sold as "organic."

15 28. The milk that Safeway sold was not organic, despite Defendant's misrepresentations
16 that the milk was, in fact, organic; in that Aurora and thus Safeway had failed to comply with the
17 requirements of the OFPA. *See* 7 C.F.R. § 205.102, *et seq.*, in at least the following ways:

18 a. Safeway represented its milk or milk products as "organic" when, in fact,
19 they were not, in willful violation of 7 C.F.R. § 205.102;

20 b. Aurora failed to maintain records concerning the production and handling of
21 milk or milk products intended to be sold, labeled, or represented as "organic" in a manner which
22 fully disclosed all activities and transactions of the certified operation in sufficient detail as to be
23 readily understood and audited, in willful violation of 7 C.F.R. § 205.103(b);

24 c. Aurora failed to provide its dairy cows with access to land used for livestock
25 grazing that it managed to provide feed value as required by 7 C.F.R. §205.200;

26 d. Aurora, intending to sell, label or represent milk or milk products as
27 "organic," failed to comply with the applicable provisions of 7 C.F.R. § 205.200;

1 e. Aurora failed to maintain an accurate organic production or handling system
2 that includes a description of practices and procedures to be performed and maintained, including
3 the frequency with which they will be performed, in willful violation of 7 C.F.R. §205.201(a)(1);

4 f. Aurora failed to maintain an accurate organic production or handling system
5 that included a description of the monitoring practices and procedures to be performed and
6 maintained, including the frequency with which they will be performed, to verify that the plan is
7 effectively implemented, in willful violation of 7 C.F.R. § 205.201(a)(3);

8 g. Aurora, after an entire, distinct herd had been converted to organic
9 production, failed to maintain all cows under organic management from the last third of gestation,
10 in willful violation of 7 C.F.R. §205.236(a)(2)(iii);

11 h. Aurora removed its dairy cows from an organic operation and subsequently
12 managed those cows on a non-organic (non-certified) operation before being sold, labeled, or
13 represented as organically produced, in willful violation of 7 C.F.R. § 206.236(b)(1);

14 i. Aurora failed to provide its dairy cows with a total fee ration composed of
15 agricultural products, including pasture and forage, that are organically produced and, where
16 applicable, organically handled, in willful violation of 7 C.F.R. 205.238(a)(3);

17 j. Aurora failed to establish and maintain living conditions for its dairy cows
18 which accommodate their health and natural behavior, in willful violation of 7 C.F.R. § 205.239(a);

19 k. Aurora failed to establish appropriate housing, pasture conditions, and
20 sanitation practices for its dairy cows to minimize the occurrence and spread of diseases and
21 parasites, in willful violation of 7 C.F.R. § 205.238(a)(3);

22 l. Aurora failed to provide its dairy cows with suitable access to the outdoors,
23 shade, shelter, exercise areas, fresh air, and direct sunlight in willful violation of 7 C.F.R.
24 § 205.239(a)(1);

25 m. Aurora failed to provide its dairy cows with access to pasture in willful
26 violation of 7 C.F.R. § 205.239(a)(2);

1 n. Aurora failed to provide its dairy cows with appropriate clean, dry bedding,
2 which complies with the feed requirements of § 205.237, in willful violation of 7 C.F.R.

3 § 205.239(a)(3);

4 o. Aurora failed to provide shelter designed to allow for its dairy cows' natural
5 maintenance, comfort behaviors, and the opportunity to exercise, as required by federal regulation;

6 p. Aurora failed to comply with the Organic Food Production Act of 1990 and
7 applicable organic production and handling regulations of 7 C.F.R. § 205.400(a);

8 q. Aurora failed to immediately notify its certifying agent concerning the
9 application of a prohibited substance to its dairy cows, in willful violation of 7 C.F.R.

10 § 205.400(f)(2); and

11 r. Aurora failed to submit to its certifying agent an updated organic production
12 or handling system plan that included a summary statement, supported by documentation, detailing
13 deviations from, changes to, modifications to, or other amendments made to the previous year's
14 organic system plan during the previous year in willful violation of 7 C.F.R. § 205.406(a)(1)(i).

15 29. Defendant Safeway failed to conduct its own inspections and oversight to determine
16 whether Aurora was complying with the laws and/or ignored Aurora's flagrant violations. Its
17 representations about cows having a "healthy mix of fresh air, plenty of exercise," were blatantly
18 false. Thus, despite the violations of federal law and regulations, Safeway marketed and sold the
19 milk or milk products under the "O" brand representing that the milk was organic, when it was not.
20 Defendant's conduct deceived Plaintiff and the Class Members into believing that they were
21 purchasing organic milk when they were not.

22 30. Thus, Safeway directly misrepresented to Plaintiff and the Class Members that the
23 "organic" milk it sold under its own label was certified organic, when it was not. Again, Plaintiff
24 and the Class Members would not have purchased Safeway's milk, and paid the premium for
25 Safeway's milk had they known that Safeway's milk was, in fact non-organic.

V. CLASS ACTION ALLEGATIONS

31. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff seeks certification of a national Consumer Class (with the designation of statewide subclasses if the Court deems necessary and appropriate) defined as follows:

All persons in the United States who purchased organic milk or milk products from Safeway.

Should this court determine that a national Consumer Class would not satisfy the applicable requisites for class certification, Plaintiff alternatively seeks certification of a statewide class, defined as:

All consumer residents and/or domiciliaries of California who purchased organic milk or milk products from Safeway.

32. Plaintiff is informed and believes that the Class consists of many thousands of persons throughout the United States, making individual joinder of all Class Members impracticable.

33. Questions of law and fact are common to the Plaintiff Class and predominate over questions affecting only individual member, including, *inter alia*, the following:

a. Whether the alleged conduct by Defendant violated laws as alleged in this Complaint;

b. Whether Defendant engaged in unfair, unlawful and/or fraudulent business practices by failing to disclose that the milk labeled as organic milk was not organic;

c. Whether Defendant violated federal and/or state regulations by failing to disclose that the milk labeled as organic milk was not organic;

d. Whether Plaintiff and the members of the Class were unconscionably induced into purchasing organic milk without adequate disclosures that the milk was not organic;

e. Whether Defendant violated California law, including the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, §§ 17500, *et seq.*, and/or California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.*;

f. Whether Defendant made misrepresentations to Plaintiff and the members of the Class about milk labeled as organic;

1 g. Whether Plaintiff and the members of the Class are entitled to equitable
2 and/or injunctive relief;

3 h. Whether Defendant's unlawful, unfair and/or deceptive practices harmed
4 Plaintiff and the members of the Class; and

5 i. Whether Defendant was unjustly enriched by its deceptive practices.

6 34. Plaintiff's claims are typical of the claims of the Class Members as described above;
7 the claims arise from the same course of conduct by Safeway and the relief sought is common.

8 35. Plaintiff will fairly and adequately represent and protect the interests of all Class
9 Members. Plaintiff is represented by counsel competent and experienced in both consumer
10 protection and class action litigation.

11 36. Class certification is proper under Fed. R. Civ. P. 23(b)(1)(A), because the
12 prosecution of separate actions by individual Class Members would create a risk of inconsistent or
13 varying adjudications with respect to individual Class Members and potentially establish
14 incompatible standards of conduct for Defendant.

15 37. Class certification is proper under Fed. R. Civ. P. 23(b)(1)(B) because the
16 prosecution of separate actions by individual Class Members would create a risk of adjudications
17 with respect to individual Class Members which would, as a practical matter, be dispositive of the
18 interest of the other members not parties to these adjudications and/or substantially impair their
19 ability to protect these interests.

20 38. Class certification is proper under Fed. R. Civ. P. 23(b)(3), because common issue
21 of law and fact predominate over any questions affecting only individual members of the Class,
22 and a class action is superior to other available methods for the fair and efficient adjudication of
23 this controversy.

24 39. A class action is superior to other methods for the fair and efficient adjudication of
25 this controversy, since joinder of all members is impracticable. Furthermore, because the
26 economic damages suffered by the individual Class Members may be relatively modest, albeit
27 significant, compared to the expense and burden of individual litigation, it would be impracticable
28

1 for Class Members to seek redress individually for the wrongful conduct alleged herein. There will
2 be no difficulty in the management of this litigation as a class action.

3 VI. CAUSES OF ACTION

4 FIRST CAUSE OF ACTION

5 (California's Business & Professions Code §§ 17200, *et seq.*)

6 40. The preceding paragraphs of this Complaint are realleged and incorporated by
7 reference. Plaintiff asserts this claim for violations of California's UCL, Bus. & Prof. Code §§
8 17200, *et seq.*, on behalf of himself and the members of the Class.

9 41. Defendant's statements and representations constitute "unfair" trade practices that
10 have the capacity to and do deceive consumers, in violation of the UCL.

11 42. All of the wrongful conduct alleged herein occurs and continues to occur in the
12 conduct of Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized
13 course of conduct that is repeated in the State of California (and throughout the United States) on
14 thousands (if not tens of thousands) of occasions daily.

15 43. As a proximate result of Defendant's wrongful conduct, Plaintiff, and the members
16 of the Class have sustained damages by paying a higher price for milk labeled as organic that was
17 not organic.

18 44. Plaintiff requests that this Court enter such orders or judgments as may be necessary
19 to restore to any person in interest any money which may have been acquired by means of such
20 unfair competition, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345, and
21 for such other relief as set forth in the Prayer for Relief.

22 SECOND CAUSE OF ACTION

23 VIOLATIONS OF THE CLRA

24 (Cal. Civ. Code §§ 1750, *et seq.*)

25 45. The preceding paragraphs of this Complaint are realleged and incorporated by
26 reference. Plaintiff asserts this claim for violations of the CLRA on behalf of himself and the
27 members of the Class.

1 consumers who purchased milk labeled organic that was not organic which is advertised and/or
2 otherwise marketed in this State, and is promoted and sold by Defendant through advertising and
3 marketing materials containing the false and misleading statements alleged herein.

4 53. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff requests that this Court enter
5 such orders or judgments as may be necessary to restore to any person in interest any money which
6 may have been acquired by means of such unfair competition, and for such other relief as set forth
7 below.

8 FOURTH CAUSE OF ACTION

9 NEGLIGENT MISREPRESENTATION

10 54. The preceding paragraphs of this Complaint are realleged and incorporated by
11 reference. Plaintiff asserts this claim for negligent misrepresentation on behalf of himself and the
12 members of the Class.

13 55. Defendant owed a duty to Plaintiff and members of the Class to exercise reasonable
14 case in making representations about organic milk.

15 56. These representations were negligently and recklessly made to potential customers
16 and the general public through uniform misbranding, concealment and non-disclosure, through
17 mass media and point-of-sale advertising, and through other information prepared or disseminated
18 by Defendant. As a direct and proximate result of these misrepresentations, omissions and
19 concealment, Plaintiff and the Class members have been damaged in and amount to be proven at
20 trial.

21 57. Defendant at all times knew that Plaintiff and the Class members relied (or should
22 be presumed to have relied) upon the labeling and lack of labeling provided by Defendant, and the
23 materiality of such labeling is established as a matter of state and federal Law. Defendant's
24 concealment, misbranding and non-disclosure were intended to influence consumers' purchasing
25 decisions and were done with reckless disregard for the rights of consumers. Plaintiff's and Class
26 members' reliance was reasonably foreseeable by Defendant.

FIFTH CAUSE OF ACTION (IN THE ALTERNATIVE)

DEFENDANT'S VIOLATION OF STATE CONSUMER PROTECTION ACTS

58. Plaintiff incorporates by reference the preceding paragraphs as if they were fully set forth herein.

59. Safeway had a statutory duty to refrain from unfair or deceptive acts or practices in the manufacture, promotion and sale of "organic" milk.

60. Had Defendant not engaged in the deceptive conduct described above, Plaintiff and the Class Members would not have purchased Safeway's "organic" milk.

61. Plaintiff believes that California law should apply nationwide. However, if California law does not apply, Defendant's deceptive, unconscionable and/or fraudulent representations and material omissions to consumers and the public, including Plaintiff and the Class Members, constituted unfair and deceptive acts and practices in violation of the state consumer protection statutes listed below:

a. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ala. Code §§ 8-19-1, *et seq.*;

b. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Alaska Stat. §§ 45.50.471, *et seq.*;

c. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ariz. Rev. Stat. §§ 44-1522, *et seq.*;

d. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ark. Code §§ 4-88-101, *et seq.*;

e. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Cal. Civ. Code §§ 1770, *et seq.* and Cal Bus. & Prof. Code §§ 17200, *et seq.*;

f. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Colo. Rev. Stat. §§ 6-1-105, *et seq.*;

g. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Conn. Gen. Stat. §§ 2-1 10a, *et seq.*;

1 h. Defendant has engaged in unfair competition or unfair or deceptive acts or
2 practices in violation of 6 Del. Code §§ 2511, *et seq.* and 2531, *et seq.*;

3 i. Defendant has engaged in unfair competition or unfair or deceptive acts or
4 practices in violation of D.C. Code §§ 28-3901, *et seq.*;

5 j. Defendant has engaged in unfair competition or unfair or deceptive acts or
6 practices in violation of Fla. Stat. §§ 501.201, *et seq.*;

7 k. Defendant has engaged in unfair competition or unfair or deceptive acts or
8 practices in violation of Ga. Stat. §§ 10-1-372, *et seq.*, 10-1-392 and 10-1-420.

9 l. Defendant has engaged in unfair competition or unfair or deceptive acts or
10 practices in violation of Haw. Rev. Stat. §§ 480-1, *et seq.*;

11 m. Defendant has engaged in unfair competition or unfair or deceptive acts or
12 practices in violation of Idaho Code §§ 48-601, *et seq.*;

13 n. Defendant has engaged in unfair competition or unfair or deceptive acts or
14 practices in violation of 815 ILCS §§ 505/1, *et seq.*;

15 o. Defendant has engaged in unfair competition or unfair or deceptive acts or
16 practices in violation of Ind. Code Ann. §§ 24-5-0.5-1, *et seq.*;

17 p. Defendant has engaged in unfair competition or unfair or deceptive acts or
18 practices in violation of Iowa Code §§ 714.16, *et seq.*;

19 q. Defendant has engaged in unfair competition or unfair or deceptive acts or
20 practices in violation of Kan. Stat. §§ 50-623, *et seq.*;

21 r. Defendant has engaged in unfair competition or unfair or deceptive acts or
22 practices in violation of Ky. Rev. Stat. §§ 367.170, *et seq.*;

23 s. Defendant has engaged in unfair competition or unfair or deceptive acts or
24 practices in violation of La. Rev. Stat. §§ 51:1401, *et seq.*;

25 t. Defendant has engaged in unfair competition or unfair or deceptive acts or
26 practices in violation of 5 Me. Rev. Stat. §§ 205A, *et seq.*;

27 u. Defendant has engaged in unfair competition or unfair or deceptive acts or
28 practices in violation of Md. Com. Law Code §§ 13-101, *et seq.*;

1 v. Defendant has engaged in unfair competition or unfair or deceptive acts or
2 practices in violation of Mass. Gen. L. Ch. 93 A, *et seq.*;

3 w. Defendant has engaged in unfair competition or unfair or deceptive acts or
4 practices in violation of Mich. Comp. Laws Ann. §§ 445.90 1, *et seq.*;

5 x. Defendant has engaged in unfair competition or unfair or deceptive acts or
6 practices in violation of Minn. Stat. §§ 325D.43, *et seq.*; 325 F.67, *et seq.*; and 325F.68, *et seq.*;

7 y. Defendant has engaged in unfair competition or unfair or deceptive acts or
8 practices in violation of Miss. Code Ann. §§ 75-24-1, *et seq.*;

9 z. Defendant has engaged in unfair competition or unfair or deceptive acts or
10 practices in violation of Vernon's Ann. Missouri Stat. §§ 407.010, *et seq.*;

11 aa. Defendant has engaged in unfair competition or unfair or deceptive acts or
12 practices in violation of Mont. Code Ann. §§ 30-14-101, *et seq.*;

13 bb. Defendant has engaged in unfair competition or unfair or deceptive acts or
14 practices in violation of Neb. Rev. Stat. §§ 59-1601, *et seq.*;

15 cc. Defendant has engaged in unfair competition or unfair or deceptive acts or
16 practices in violation of Nev. Rev. Stat. Ann. §§ 598.0903, *et seq.*;

17 dd. Defendant has engaged in unfair competition or unfair or deceptive acts or
18 practices in violation of N.H. Rev. Stat. §§ 358-A:1, *et seq.*;

19 ee. Defendant has engaged in unfair competition or unfair or deceptive acts or
20 practices in violation of N.J. Rev. Stat. §§ 56:8-1, *et seq.*;

21 ff. Defendant has engaged in unfair competition or unfair or deceptive acts or
22 practices in violation of N.M. Stat. §§ 57-12-1, *et seq.*;

23 gg. Defendant has engaged in unfair competition or unfair or deceptive acts or
24 practices in violation of N.Y. Gen. Bus. Law §§ 349, *et seq.* and 350-e, *et seq.*;

25 hh. Defendant has engaged in unfair competition or unfair or deceptive acts or
26 practices in violation of N.C. Gen. Stat. §§ 75-1.1, *et seq.*;

27 ii. Defendant has engaged in unfair competition or unfair or deceptive acts or
28 practices in violation of N.D. Cent. Code §§ 51-12-01, *et seq.*, and 51-15-01, *et seq.*;

1 jj. Defendant has engaged in unfair competition or unfair or deceptive acts or
2 practices in violation of Ohio Rev. Stat. §§ 1345.01, *et seq.*;

3 kk. Defendant has engaged in unfair competition or unfair or deceptive acts or
4 practices in violation of 15 Okla. Stat. §§ 15 751, *et seq.*;

5 ll. Defendant has engaged in unfair competition or unfair or deceptive acts or
6 practices in violation of Or. Rev. Stat. §§ 646.605, *et seq.*;

7 mm. Defendant has engaged in unfair competition or unfair or deceptive acts or
8 practices in violation of 73 Pa. Stat. §§ 201-1, *et seq.*;

9 nn. Defendant has engaged in unfair competition or unfair or deceptive acts or
10 practices in violation of R.I. Gen. Laws. §§ 6-13.1-1, *et seq.*;

11 oo. Defendant has engaged in unfair competition or unfair or deceptive acts or
12 practices in violation of S.C. Code Laws §§ 39-5-10, *et seq.*;

13 pp. Defendant has engaged in unfair competition or unfair or deceptive acts or
14 practices in violation of S.D. Codified Laws §§ 37-24-1, *et seq.*;

15 qq. Defendant has engaged in unfair competition or unfair or deceptive acts or
16 practices in violation of Tenn. Code §§ 47-18-101, *et seq.*;

17 rr. Defendant has engaged in unfair competition or unfair or deceptive acts or
18 practices in violation of Tex. Bus. & Com. Code §§ 17.41, *et seq.*;

19 ss. Defendant has engaged in unfair competition or unfair or deceptive acts or
20 practices in violation of Utah Code §§ 13-11-1, *et seq.*;

21 tt. Defendant has engaged in unfair competition or unfair or deceptive acts or
22 practices in violation of 9 Vt. §§ 2451, *et seq.*;

23 uu. Defendant has engaged in unfair competition or unfair or deceptive acts or
24 practices in violation of Va. Code §§ 59.1-196, *et seq.*;

25 vv. Defendant has engaged in unfair competition or unfair or deceptive acts or
26 practices in violation of Wash. Rev. Code. §§ 19.86.0 10, *et seq.*;

27 ww. Defendant has engaged in unfair competition or unfair or deceptive acts or
28 practices in violation of West Virginia Code §§ 46A-6-101, *et seq.*;

xx. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Wis. Stat. §§ 100.20, *et seq.*; and

yy. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Wyo. Stat. §§ 40-12-101, *et seq.*

62. Plaintiff and the Class Members relied upon Defendant's misrepresentations and/or omissions (as described herein) in purchasing Defendant's "organic" milk.

63. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff and the Class Members have been damaged by, *inter alia*, paying a premium price for "organic" milk, when Plaintiff and the Class Members received non-organic milk.

64. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff and the Class are entitled to compensatory damages, treble damages, attorneys' fees and cost of this suit.

SIXTH CAUSE OF ACTION

COMMON LAW UNJUST ENRICHMENT

65. This Cause of Action is pled in the alternative to all contract-based claims and/or causes of action at law.

66. Defendant has received a benefit from Plaintiff and the Class Members in the form of the prices Plaintiff and the Class Members paid for Defendant's "organic" milk or milk products during the relevant time period.

67. Defendant is aware of its receipt of the above-described benefit.

68. Defendant received the above-described benefit to the detriment of Plaintiff and each of the other members of the Class.

69. Defendant continues to retain the above-described benefit to the detriment of Plaintiff and the Class Members.

70. Under the circumstances, it would be inequitable for Defendant to retain the above described benefit.

71. As a result of Defendant's unjust enrichment, Plaintiff and the Class Members have sustained damages in an amount to be determined at trial and seek full disgorgement and restitution

1 of Defendant's enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful or
2 wrongful conduct alleged above.

3 **SEVENTH CAUSE OF ACTION**

4 **BREACH OF EXPRESS WARRANTY**

5 72. Plaintiff hereby incorporates the preceding paragraphs by reference.

6 73. Aurora sold its "organic" milk or milk products to retailers who sold that milk or
7 milk products to Plaintiff and the Class Members.

8 74. At all times relevant to this action, Defendant falsely represented that its milk or
9 milk products were "organic" when they were not produced in compliance with the applicable
10 organic certification requirements, laws, standards and regulations.

11 75. By its statements and representations about the "organic" status of its milk or milk
12 products, Defendant warranted the production process and condition of that "organic" milk or milk
13 products purchased by Plaintiff and the Class Members.

14 76. Defendant made these representations and warranty statements to induce Plaintiff
15 and the Class Members to purchase Defendant's "organic" milk or milk products or was a material
16 factor in the decision of Plaintiff and the Class Members to purchase the milk or the milk products.

17 77. Due to its conduct alleged herein, Defendant's "organic" milk or milk products
18 failed to conform to each of these warranties.

19 78. As a result of Defendant's conduct, Plaintiff and the Class Members have been
20 damaged.

21 79. Within a reasonable time after Plaintiff and the Class Members knew or should have
22 known of the failure to conform, Plaintiff, individually and on behalf of the Class, placed
23 Defendant on notice thereof.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, individually and on behalf all others similarly situated,
26 respectfully requests that this Court enter a judgment against Defendant and in favor of Plaintiff,
27 and grant the following relief:
28

Plaintiff, by counsel, requests a trial by jury on those causes of actions set forth herein.

HAGENS BERMAN SOBOLEW SHAPIRO LLP

715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
shanas@hbslaw.com

1 Steve W. Berman
2 HAGENS BERMAN SOBOL SHAPIRO LLP
3 1301 Fifth Avenue, Suite 2900
4 Seattle, WA 98101
5 Telephone: (206) 623-7292
6 Facsimile: (206) 623-0594
7 steve@hbsslaw.com

8 Elizabeth A. Fegan
9 HAGENS BERMAN SOBOL SHAPIRO LLP
10 820 North Boulevard, Suite B
11 Oak Park, IL 60301
12 Telephone: (708) 776-5600
13 Facsimile: (708) 776-5601
14 beth@hbsslaw.com

15 Attorneys for Plaintiff
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